

1 **IN THE UNITED STATES BANKRUPTCY COURT**
2 **DISTRICT OF PUERTO RICO**

3 In re:

4 HOTEL AIRPORT, INC.,

5 Debtor.

Case No. 11-06620-ESL11

Chapter 11

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7 **OBJECTION TO DEBTOR'S MOTION TO REOPEN CASE**

8 TO THE HONORABLE COURT:

9 COMES NOW Best Western International, Inc. ("Best Western"), a creditor and
10 interested party herein, objects to Debtor's Motion to Reopen Case and respectfully requests the
11 Court to enter an Order denying said motion, and in support of this Objection states as follows:

12 1. Debtor seeks to reopen its bankruptcy case for the purpose of filing an adversary
13 proceeding against Best Western, its directors, and its attorneys, for alleged violation of the
14 discharge granted by its confirmed Plan of Reorganization; alleged violation of the automatic stay;
15 for injunctive relief; for alleged breach of contracts; and for alleged Law 75 and Law 21 claims.

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17 **Alleged violation of discharge**

18 2. Best Western has filed a complaint, and an amended complaint, in the United States
19 District Court for the District of Arizona, against Hotel Airport, Inc. ("HAI"), and against David
20 Tirri, alleging trademark infringement and breach of contract arising from said defendants'
21 continued use and display of the Best Western name and symbols at defendants' hotel at San Juan
22 Airport.

23 3. Best Western's original complaint alleged trademark infringement by HAI and Tirri
24 during the period from June 18, 2012 through June 7, 2013. On September 30, 2013, Best Western
25 filed an amended complaint limiting Best Western's claim against HAI to the period from March
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1 13, 2013 through June 7, 2013, noting HAI's Plan confirmation and discharge of claims through
2 March 13, 2013.

3 4. Neither HAI nor Tirri have responded to Best Western's complaint or amended in
4 the District Court for the District of Arizona.

5 5. Best Western does not seek any damages in the Arizona lawsuit from HAI with
6 respect to any matter arising prior to March 13, 2013.

7 **Alleged improper termination of the Best Western membership**

8 6. The Debtor seeks to assert claims against Best Western for an alleged violation of
9 the automatic stay, breach of contract, and Law 75 and Law 21 violations, all based on claims that
10 Best Western improperly terminated Debtor's Best Western membership on June 2, 2012, during
11 the pendency of Debtor's Chapter 11 proceeding.

12 7. Review of the Court's file in this matter discloses that the Debtor entered into a Best
13 Western Membership Agreement with respect to its hotel on March 7, 2008, prior to the filing of its
14 Chapter 11 petition for relief on August 5, 2011. The Best Western Membership Agreement was an
15 executory contract at the time of filing Debtor's petition for relief.

16 8. On November 11, 2011, the Debtor assumed the Best Western Membership
17 Agreement. Assumption of the membership agreement required performance by the Debtor of all
18 obligations of the agreement.

19 9. On June 2, 2012, Best Western terminated the membership agreement for failure of
20 the Debtor to comply with Best Western's quality and branding requirements.

21 10. On November 9, 2012, Debtor filed its Amended Plan of Reorganization.

22 11. On February 11, 2013, Best Western filed its Objection to Confirmation of Plan of
23 Reorganization, noting that Debtor's Amended Plan proposed to again assume the Best Western
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1 Membership Agreement.

2 12. On February 13, 2013, Debtor filed its Answer to Best Western's Objection to
3 Confirmation, stating among other matters that

- 4 • "Debtor does not intend to assume the contract"; that "Best Western is correct in
5 stating that the contract was terminated in 2012...";
- 6 • that Debtor "did not agree" with the termination;
- 7 • that "...debtor has decided that the franchise benefits are not worth the cost and
8 requirements that Best Western insists upon. Hence, debtor shall continue operating
9 its hotel business (and effect its reorganization) without being under the Best
10 Western membership, as it has done since July 2012."

11 (See Docket # 240)

12 14. As a consequence of the filing of Debtor's Answer to Best Western's Objection to
13 Confirmation, Best Western did, on February 22, 2013, withdraw its objection to confirmation of
14 Debtor's Amended Plan. (See Docket #244)

15 24. On April 26, 2013, after termination of its Best Western membership, after filing its
16 Answer to Best Western's Objection to Confirmation, and after Best Western withdrew its objection
17 to confirmation, Debtor filed its Application for Final Decree, asserting, among other matters, that
18 "this case has been fully administered." On June 5, 2013, this Court entered its Final Decree herein,
19 based on representations of this Debtor.

20 34. By reason of the foregoing, Debtor has consented to the termination of its Best
21 Western membership, and has waived and is estopped from pursuing any claim arising from the
22 termination of its membership.

23 44. 11 U.S.C. § 350(b) provides that a case may be reopened to accord relief to the
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1 debtor, or for other cause. The reopening of a case rests within the sound discretion of the Court,
2 but a case should be reopened only upon a showing of compelling circumstances justifying the
3 reopening. In re Pagan, 59 B.R. 394 (1986, DC Puerto Rico), citing Reid v. Richardson, 304 F.2d
4 351, 355 (4th Cir. 1962); In re Rediker, 22 B.R. 71 (1982, Bank. M.D. Tenn.). See also, Virgin
5 Islands Bureau of Internal Revenue v. St. Croix Hotel Corp., 60 B.R. 412 (1986, DC VI), affd 867
6 F.2d 169 (CA3 VI) (holding that notwithstanding court's discretion, case should not be reopened
7 to relieve party of consequences of his own mistake or ignorance, nor is good cause established
8 by mere inattention or neglect; thus discretion should be exercised only where compelling reason
9 for reopening case is demonstrated).

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11 54. The Debtor has failed to show any compelling reason for reopening its bankruptcy
12 case.

13 WHEREFORE, Best Western respectfully requests the Court to enter an Order denying
14 Debtor's Motion to Reopen Case.

15 Dated this 2nd day of January, 2014.

17 **CERTIFICATE OF SERVICE**

18 I certify that on January 2, 2014, I electronically transmitted the attached document to the
19 Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic
20 Filing to the following CM/ECF registrants: Edgardo Munoz, emunoz@emunoz.net; Rafael A.
21 Gonzalez Valiente, rgonzalez@lbrglaw.com; Office of U.S. Trustee,
ustpregion21.hr.ecf@usdoj.gov; All other CM/ECF participants.

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